

APPEAL NO. 022698
FILED DECEMBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 17, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter (May 29 through August 27, 2002). The claimant appealed, essentially on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first quarter. The claimant contended at the CCH that he had no ability to work during the qualifying period due to his compensable injury. The hearing officer determined that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period and found the claimant was capable of performing sedentary to light-duty work. In order to prevail on his contention that he had no ability to work, the claimant needed to meet the requirements of Rule 130.102(d)(4), which provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The claimant did not work or look for work during the qualifying period. The hearing officer determined that the narrative reports submitted into evidence did not explain or even establish that the claimant's compensable injury caused a total inability to work during the qualifying period for the first quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period and that the claimant is not entitled to SIBs for the first quarter are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, the claimant attached new evidence to his appeal, which would purportedly show that he is entitled to first quarter SIBs under a theory of "no ability to

work.” Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers’ Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The evidence offered is cumulative in nature and is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge